

Adopt Section 35410 to read:

35410      CONSULTING WITH THE INDIAN CHILD'S TRIBE FOR      35410  
PURPOSES OF CONCURRENT PLANNING AND PERMANENCY

- (a)    The placement agency shall consult with the Indian child's tribal representative before initiating the tribal customary adoption process and of the following.

  - (1)    Overview of all permanency plan options, including financial benefits.
  - (2)    Discuss the services that the Indian child needs pre/post permanency.
  - (3)    Consult with the Indian child about the possibility of tribal customary adoption as an appropriate permanent plan. The tribal representative may, but is not required, to provide written confirmation of the identification of tribal customary adoption.
- (b)    Starting at disposition and in every report filed with the juvenile court thereafter, the placement agency shall document whether the Indian child's tribe has identified tribal customary adoption as the permanent plan. This documentation must occur before initiating the written assessment of the Indian child regarding permanency.
- (c)    The tribal customary adoption discussion shall be maintained throughout the entirety of the case.
- (d)    Nothing in the proceedings supersedes other tribal customary adoption procedures already in place.

Authority cited:      Sections 366.24, 358.1, 10553, and 10554, Welfare and Institutions Code; and Assembly Bill 1325, Chapter 287, Statutes of 2010.

Reference:          Sections 366.24, 351.8, 358.1, and 361.5, Welfare and Institutions Code; and All County Letter 10-47.

Adopt Section 35411 to read:

35411      WRITTEN ASSESSMENT OF THE INDIAN CHILD FOR PURPOSES      35411  
OF ADOPTION

(a)    In addition to the adoption requirements in Sections 35127.1, the placement agency's written assessment shall include:

(1)    Identifying Information, including:

(A)    The Indian child's tribal membership or tribal affiliation.

(B)    Any siblings and/or extended family members, including their tribal membership or tribal affiliation.

(2)    Assessment of the Indian child's readiness for adoption and willingness to be adopted, including:

(A)    A statement from the Indian child's tribe concerning the Indian child's wishes for Indian children age 12 and older.

(3)    An analysis of the likelihood that the Indian child will be adopted through the tribal customary adoption process, including whether a potential adoptive family has been identified.

(4)    The results of a psychological evaluation when it exists.

(A)    The placement agency shall obtain all of the known results of a psychological evaluation for an Indian child age five years and older when there is an indication that such an evaluation is necessary as determined by either:

1.    The placement agency's review of the Indian child's history, which indicates a genetic predisposition for mental illness, or;

2.    The placement agency's review of the Indian child's behavior, which seems abnormal and symptomatic of mental illness, such as:

a.    Pervasive lack of responsiveness to other people.

b.    Solitary, stereotyped, repetitive play.

c.    Peculiar speech patterns or speech disorders.

- d. Extreme need for sameness.
- e. Peculiar interest in or attachment to inanimate objects.
- f. Retreat into fantasy, bizarre gestures, or mannerisms.
- g. Extreme aggression and uncontrollability when separated from parental figures or the Indian custodian.
- h. Slowed thinking, apathy, or suicidal thoughts.
- i. Bizarre eating habits or disturbances while eating.
- j. Constricted or inappropriate affect.
- k. Incoherence with delusions, hallucinations, or loose associations.
- l. Oddities of motor development, such as peculiar posturing or peculiar hand or finger movements.
- m. Excessive, persistent anxiety, and worry.
- n. Psychomotor agitation or hyperactivity.

(B) When an Indian child that is age five years or older is not displaying symptoms of emotional disturbance, such as those specified in Section 35411(a)(4)(A)(2), the placement agency shall:

1. Determine, based on the placement agency's judgment, whether other available information about the Indian child and/or the parent or the Indian custodian indicates that a psychological evaluation is necessary to facilitate the placement and ongoing care of the Indian child, and;
2. If the placement agency determines a psychological evaluation is necessary, arrange for and obtain the results of a psychological evaluation for the Indian child.

3. Information which may indicate an evaluation is necessary may be provided by birth or court records or reports from relatives, foster parents, teachers, medical personnel, or others who are familiar with the Indian child, birth parent, or Indian custodian. This information may include, but is not limited to, any of the following:
  - a. Birth parent history of mental illness.
  - b. Birth mother use of drugs or alcohol during pregnancy.
  - c. Indian child history of severe or sustained physical, sexual, or emotional abuse.

Authority cited: Sections 366.24, 10553, and 10554, Welfare and Institutions Code; Section 1530, Health and Safety Code; Sections 8608 and 8621, Family Code, and Assembly Bill 1325, Chapter 287, Statutes of 2010.

Reference: Sections 366.24, 361.5, 366.21, 366.22, 366.25, and 366.26, Welfare and Institutions Code; Sections 8600.5, 8608, 8706, 8715, and 9100, Family Code; 25 U.S.C. 1901 et seq; and All County Letter 10-47.

Adopt Section 35412 to read:

35412      DOCUMENTS, REPORTS AND AUTHORIZATION REQUIRED      35412  
FOR ASSESSMENTS OF THE INDIAN CHILD

(a)    The placement agency shall obtain:

- (1)    Confirmation from the Indian child's tribe of whether it approves tribal customary adoption as the permanent plan and whether the tribe will conduct its own home study for the adoptive applicants or use a designee to conduct the home study.
- (2)    A certified copy of the Indian child's birth certificate.
- (3)    Complete information regarding the legal status of the Indian child.
- (4)    All court reports from the Indian child's dependency case.
- (5)    Medical reports.
  - (A)    The information contained in the medical report shall be sufficient to enable the agency to comply with the requirements of Family Code section 8706, as set forth at Section 35195(a)(1).
- (6)    Dental reports, when they exist.
- (7)    Authorizations for the release of:
  - (A)    Medical information.
  - (B)    Dental reports, if any.
  - (C)    Scholastic information, if any.
  - (D)    Psychological information, if any.
  - (E)    Medical, psychological, and social information about birth parents.
- (8)    Authorization for the Indian child's medical care.

Authority cited: Sections 366.24, 10553, and 10554, Welfare and Institutions Code; Section 1530, Health and Safety Code; Sections 8608, 8621, and 8706, Family Code; and Assembly Bill 1325, Chapter 287, Statutes of 2010.

Reference: Sections 358.1, 361.5, 366.21, 366.22, and 366.24, Welfare and Institutions Code; and All County Letter 10-47.

Adopt Section 35413 to read:

35413 SERVICES FOR CHILDREN ACCEPTED FOR ADOPTION  
PLANNING

35413

(a) The placement agency shall collaborate with the Indian child's tribe to provide these services.

(1) Preventive and remedial medical care, including mental health services.

(2) Obtaining medical reports and the medical background of the Indian child.

(3) Services pertaining to the placement of the Indian child for adoption, the emotional preparation of the Indian child for adoption, and coping through losses and separations.

(4) Services pertaining to supervision of the adoptive placement.

(5) Preparation and completion of the Adoption Placement Agreement.

(6) Preparation and completion of the Adoption Assistance Agreement, when necessary.

(7) Determination of the AAP payment level.

(8) Recertification of the Adoption Assistance Agreement.

Authority cited: Sections 366.24, 10553, and 10554, Welfare and Institutions Code; and Assembly Bill 1325, Chapter 287, Statutes of 2010.

Reference: Section 358.1, 366.22, 366.24, and 16120, Welfare and Institutions Code; Section 8706, Family Code; and All County Letter 10-47.

Adopt Section 35414 to read:

35414 WRITTEN APPLICATION, AGENCY ACTIONS, AND AUTHORITY 35414  
FOR DISAPPROVAL

- (a) The placement agency shall require a written application for tribal customary adoption before it assesses the applicant.
- (b) The placement agency shall provide information to the adoptive applicant as specified in Sections 35179 and 35179.1.
- (c) The placement agency shall assess each applicant as specified in Sections 35181 or 35183.
  - (1) The placement agency may give priority consideration to applicants seeking to adopt an Indian child with characteristics similar to those children for whom the placement agency is seeking adoptive parents.
  - (2) If the anticipated waiting time before the placement agency begins an assessment is more than six months, the placement agency shall:
    - (A) Provide the applicant with the names of the other agencies which provide assessment services in the county where the applicant resides, and;
    - (B) Inform the applicant of the availability of the federal income tax credit, which may reimburse the family for all or part of the cost of an assessment by a licensed private adoption agency.
- (d) The agency shall provide the applicant with written information that describes the Adoption Assistance Program.

**HANDBOOK BEGINS HERE**

- (1) Publication 152, "Adoption Assistance Program," describes the Adoption Assistance Program.

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- (e) Where the permanency plan is a tribal customary adoption, the Indian child's tribe shall make the final determination on whether an Indian child's placement is approved.



Authority cited: Sections 366.24, 10553, and 10554, Welfare and Institutions Code; and Assembly Bill 1325, Chapter 287, Statutes of 2010.

Reference: Sections 366.21, 366.24, 366.25, 361.5, and 16120, Welfare and Institutions Code; Section 8621, Family Code; and All County Letter 10-47.

Adopt Section 35415 to read:

35415                      TRIBAL CUSTOMARY ADOPTION HOME STUDY                      35415

- (a)    The Indian child's tribe or the tribe's designee may conduct the tribal customary adoption home study.
- (b)    The tribe's designee shall conduct the tribal customary adoption home study in consultation with the Indian child's tribe.
- (c)    If a tribally-specified home was approved through the Resource Family Approval process, a tribal customary adoption home study is not required to complete a tribal customary adoption.
  - (1)    The Indian child's tribe may use the Resource Family Approval for this purpose, or the tribe or its designee may conduct a tribal customary adoption home study in accordance with Section 35415(a), but completion of a home study could delay permanency.
- (d)    Tribally-approved homes must conduct a home study in accordance with Section 35415(a).
- (e)    The Indian child's tribe may conduct the background checks for the purposes of the tribal customary adoption if it has authority pursuant to Penal Code 11105.08(g).
- (f)    Section 35418 "Tribal Designee Conducts the Home Study" does not apply if the Indian child's tribe conducts the tribal customary adoption home study.

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Penal Code 11105.08(g): As used in this section, a "tribal agency" means an entity designated by a federally-recognized tribe, as authorized to approve a home consistent with the federal Indian Child Welfare Act (25 U.S.C. 1903 et seq.), for placement of an Indian child into foster or adoptive care, including the authority to conduct a criminal or child abuse background check of, and grant exemptions to, an individual who is a prospective foster or adoptive parent, an adult who resides or is employed in the home of an applicant for approval, any person who has a familial or intimate relationship with any person living in the

home of an applicant, or an employee of a tribal child welfare agency who may have contact with a child.

Welfare and Institutions Code section 366.24(c)(3)(C): If the tribe conducts its own home study, the public adoption agency that is otherwise authorized to obtain criminal background information for the purpose of adoption shall perform the state and federal criminal background check required pursuant to (A) through the Department of Justice (DOJ) prior to final approval of the adoptive placement.

Welfare and Institutions Code section 366.24(c)(4): If federal or state law provide that tribes may conduct all required background checks for prospective adoptive parents, the tribally-administered background checks shall satisfy the requirements of this section, so long as the standards for the background checks are the same as those applied to all other prospective adoptive parents in the California.

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Authority cited:        Sections 366.24, 10553, and 10554, Welfare and Institutions Code; Section 11105.08, Penal Code; and Assembly Bill 1325, Chapter 287, Statutes of 2010.

Reference:            Sections 336.24, 366.24, and 366.26, Welfare and Institutions Code; and All County Letter 10-47.

Adopt Section 35416 to read:

35416                      DESIGNATION OF THE AGENCY                      35416

- (a) The tribal representative with authority may designate a placement agency to complete the tribal customary adoption home study.
- (b) The tribal designee may include a county adoption agency, the California Department of Social Services, when it is acting as an adoption agency, or a licensed California private adoption agency.

Authority cited:                      Sections 366.24, 10553, and 10554, Welfare and Institutions Code; and Assembly Bill 1325, Chapter 287, Statutes of 2010.

Reference:                              Section 366.24, Welfare and Institutions Code; and All County Letter 10-47.

Adopt Section 35417 to read:

35417            TRIBAL DESIGNEE'S RESPONSIBILITIES

35417

(a)    The tribal designee is responsible for:

- (1)    Consulting and collaborating with the Indian child's tribe.
- (2)    Completing the tribal customary adoption home study using the tribe's prevailing social and cultural standards and delivering a copy of the signed home study to the Indian child's tribal representative.
- (3)    Recommending approval or denial of the adoptive applicant.
- (4)    Screening the criminal background and the FBI criminal record of the applicant and any other adults residing in the home from the DOJ.
- (5)    Screening out-of-state child abuse and neglect registry checks for the applicant and any other adult in the household who lived in another state in the preceding five years.
- (6)    Providing a written summary of criminal history information to the Indian child's tribe.

(b)    The tribal designee may also be responsible for:

- (1)    Supervision of the placement.
- (2)    Termination of the adoptive placement.
- (3)    Completing the final juvenile court report.
- (4)    The immediate filing of the final juvenile court report.

Authority cited:        Sections 366.24, 10553, and 10554, Welfare and Institutions Code; and Assembly Bill 1325, Chapter 287, Statutes of 2010.

Reference:            Sections 366.24 and 366.26, Welfare and Institutions Code; Sections 11076 and 11142, Penal Code; and All County Letter 10-47.

Adopt Section 35418 to read:

35418                      TRIBAL DESIGNEE CONDUCTS THE HOME STUDY                      35418

- (a) The placement agency shall receive the Indian child's tribal designation of their designee prior to accepting the application to adopt and home study.
- (b) In addition to the adoption requirements in Sections 35180 through 35184, the Indian tribe's designee shall use the tribe's prevailing social and cultural standard to base a determination for tribal customary adoption home study, which shall include:
  - (1) Identifying information about the prospective adoptive parent's tribal membership or affiliation.
  - (2) Determination of the prospective adoptive parent's commitment and ability to enable the Indian child to participate in cultural and ceremonial events as well as traditions with the Indian child's tribe.
- (c) The tribal designee shall make a recommendation to the Indian child's tribe regarding the approval or disapproval of the prospective adoptive parent. However, the Indian child's tribe shall issue the final approval or disapproval of the prospective adoptive parent.
- (d) In addition to the adoption requirements in Section 35177(f), the tribal designee shall not approve an application for the adoptive placement of an Indian child until:
  - (1) The tribal designee has consulted with the tribe.
- (e) In addition to the adoption requirements in Section 35177(g), the tribal designee shall provide the applicant with written notification of its decision regarding the adoptive placement of an Indian child with the applicant and shall include:
  - (1) Written notification of the tribal designee's recommendation to the tribe regarding the approval or disapproval of the applicant.

Authority cited: Sections 366.24, 10553, and 10554, Welfare and Institutions Code; and Assembly Bill 1325, Chapter 287, Statutes of 2010.

Reference: Sections 361.5, 366.21, 366.22, 366.24, 366.25, and 366.26, Welfare and Institutions Code; Section 8608, Family Code; and All County Letter 10-47.

Adopt Section 35419 to read:

35419

TRIBAL CUSTOMARY ADOPTION ORDER

35419

- (a) The Indian child's tribe shall prepare the Tribal Customary Adoption Order in accordance with its customs and traditions and is not required to disclose tribal customs and traditions.
- (b) The Tribal Customary Adoption Order will be in a form identified by the Indian child's tribe and shall address but not limited to the following:
  - (1) The modification of the legal relationship of the birth parents or Indian custodian and the Indian child.
  - (2) Contact between the birth parents and Indian custodians, if any.
  - (3) Responsibilities of the birth parents and Indian custodians.
  - (4) The Indian child's legal relationship with tribe.
  - (5) The rights of inheritance of the Indian child.

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Welfare & Institutions Code section 366.24 (11): Prior consent to a permanent plan of tribal customary adoption of an Indian child shall not be required of an Indian parent or Indian custodian, whose parental relationship to the child will be modified by the tribal customary adoption.

**HANDBOOK ENDS HERE**

- (c) The Tribal Customary Adoption Order shall not include any state orders pertaining to the child support obligation of the birth parents or Indian custodian.
- (d) Any parental rights or obligations not specified in the Tribal Customary Adoption Order shall be vested in the tribal customary adoption parents.

Authority cited: Sections 366.24, 10553 and 10554, Welfare and Institutions Code; and Assembly Bill 1325, Chapter 287, Statutes of 2010.

Reference: Sections 366.24, Welfare and Institutions Code; and All County Letter 10-47.



Adopt Section 35420 to read:

35420                    TRIBAL CUSOMTARY ADOPTION ORDER AND ADDENDUM                    35420  
REPORT TO THE JUVENILE COURT

- (a)    The Indian child's tribe shall provide a copy of the Tribal Customary Adoption Order to the agency and file it with the juvenile court 20 days prior to the Welfare and Institutions Code section 366.26 hearing or 20 days prior to continued 366.26 hearings.
- (b)    The placement agency shall provide a copy of the Tribal Customary Adoption Order to the prospective adoptive parents.
- (c)    The agency shall file an addendum report with the juvenile court seven days prior the continued 366.26 hearings regarding the prospective tribal customary adoption.

Authority cited:            Sections 366.24, 366.26, 10553, and 10554, Welfare and Institutions Code; and Assembly Bill 1325, Chapter 287, Statutes of 2010.

Reference:                Sections 366.24 and 366.26, Welfare and Institutions Code; and All County Letter 10-47.

Adopt Section 35421 to read:

35421            PLACEMENT, SUPERVISION, AND PLACEMENT AGREEMENT    35421

- (a)    Once the Indian child's tribe approves the home study, the juvenile court affords full faith and credit to the Tribal Customary Adoption Order and the Indian child is eligible for placement.
- (b)    The agency with care and placement responsibility shall make the placement and sign the Adoption Assistance Agreement.
- (c)    The placement agency shall sign the adoption assistance agreement, pursuant to Welfare and Institutions Code section 16120(g), and the prospective adoptive parent(s) may file the petition for adoption.
- (d)    The agency shall supervise the adoptive placement for six months, except in any of the following circumstances:
  - (1)    The prospective adoptive parent had an approved assessment and successfully completed the adoption of another child in California within the past five years and the placement was supervised by a placement agency.
  - (2)    The prospective adoptive parent is commissioned or enlisted in the military service or auxiliary of the United States, engaged in service on behalf of any governmental entity of the United States, or employed by the American Red Cross or in any other recognized charitable or religious organization, whereas, completion of the six-month supervisory period would delay completion of an adoption which the agency has determined should be completed.
  - (3)    The Indian child to be adopted is a foster child of the prospective adoptive parent whose foster care placement has been supervised by a placement agency before the signing of the adoptive placement agreement, in which case the supervisory period may be shortened by a month for each full month that the Indian child has been in foster care with the prospective adoptive family.
  - (4)    The Indian child to be adopted was a foster child placed with a relative or a relative of the Indian child's half sibling whose foster care placement has been supervised by a placement agency before the signing of the adoptive placement agreement, in which case the supervisory period may be

shortened by a month for each full month that the Indian child has been in foster care with the relative.

- (5) The Indian child to be adopted is placed with a relative with whom he or she has an established relationship.

Authority cited: Sections 366.24, 10553, and 10554, Welfare and Institutions Code; and Assembly Bill 1325, Chapter 287, Statutes of 2010.

Reference: Section 366.24, Welfare and Institutions Code; and All County Letter 10-47.

Adopt Section 35422 to read:

35422            COMPLETING AND IMMEDIATELY FILING THE FINAL COURT    35422  
REPORT

- (a)    The agency that has placement responsibility for the Indian child shall submit a full and final report to the juvenile court, in accordance with Section 35211(d), that shall include but not be limited to:
- (1)    A copy of the executed Tribal Customary Adoption Order.
  - (2)    Medical and family background information about the birth parents, as required by Section 35195(a).
  - (3)    Information obtained in the Assessment of the Child, as required by Section 35127.1.
  - (4)    Information obtained in the Assessment of the Applicant, as required by Section 35180.
  - (5)    Conclusions drawn from an assessment of whether the petitioner's record of criminal or violent behavior, if any, will affect his or her ability to provide appropriate parenting and a stable and safe home environment for the Indian child.
    1.    The placement agency shall utilize the most current criminal record information in its preparation of the final court report.
- (b)    The placement agency shall notice the Indian child's tribe of the final hearing.

Authority cited:            Sections 366.24, 10553, and 10554, Welfare and Institutions Code; and Assembly Bill 1325, Chapter 287, Statutes of 2010.

Reference:                Sections 294, 366.24, and 366.26, Welfare and Institutions Code; and All County Letter 10-47.

Adopt Section 35423 to read:

35423

SET ASIDES

35423

- (a) The adoptive parent(s) may file a petition to set aside the tribal customary adoption with the juvenile court in which the tribal customary adoption was granted within five years of the date issuance of Tribal Customary Adoption Order if:
  - (1) The Indian child has a developmental disability or mental illness that existed prior to the finalization of the tribal customary adoption, to the extent that the Indian child cannot be relinquished to the agency on the grounds that the Indian child is unadoptable, or;
  - (2) The Indian child has a developmental disability or mental illness of which the adoptive parent(s) had no knowledge or notice before the initiation of the tribal customary adoption.
- (b) The Department shall notify the tribe as soon as the Department has received notice that a set aside petition was filed.
- (c) While the petition to set aside is pending the county may comply with the active efforts requirements and placement preferences of the Indian Child Welfare Act.
- (d) The placement agency shall file a full report with the juvenile court to set aside the tribal customary adoption. The report shall address:
  - (1) Whether the facts alleged in the petition to set aside are true.
  - (2) The active efforts made to prevent the breakup of the Indian family, and;
  - (3) The appropriate new disposition of the Indian child including, but not limited to, the agency's compliance with the Indian Child Welfare Act placement preferences.
- (e) The placement agency shall appear in the juvenile court to represent the Indian child in the hearing to set aside the tribal customary adoption.
- (f) The Indian child shall be returned to the county in which the tribal customary adoption proceeding took place when a final decree of tribal customary adoption has been set aside. The disposition of the Indian child after the juvenile court has entered an order to set aside tribal customary adoption shall include consultation with the Indian child's tribe.

- (g) Upon granting of a petition to set aside the tribal customary adoption and resumption of the dependency proceedings over the Indian child, the placement agency with placement authority of the Indian child shall apply the requirements of the Indian Child Welfare Act to all subsequent proceedings and supervision of the Indian child's case.

Authority cited: Sections 366.24, 10553, and 10554, Welfare and Institutions Code; and Assembly Bill 1325, Chapter 287, Statutes of 2010.

Reference: Sections 366.24 and 366.26 Welfare and Institutions Code; Sections 9100 and 9102, Family Code; 25 USC 1901 et seq; and All County Letter 10-47.

Adopt Section 35424 to read:

35424            Interstate Placement of Indian Children            35424

- (a)    An Indian child may be placed outside of the state for purposes of tribal customary adoption.
- (b)    The tribal customary adoption shall be finalized in the juvenile court in which the Indian child is a dependent.

Authority cited:        Sections 366.24, 10553, and 10554, Welfare and Institutions Code; and Assembly Bill 1325, Chapter 287, Statutes of 2010.

Reference:            Sections 366.24 and 366.25, Welfare and Institutions Code; and All County Letter 10-47.